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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 790 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

STATE OF GUJARAT

Appearance:

MR JF SHAH for Petitioner

MR DP JOSHI AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 02/03/2001

ORAL JUDGEMENT

#. The petitioner who was at the relevant point of time working as Superintendent, Community Health Centre, Dhari, District Amreli has filed this petition challenging the order made by the State Government on 9.8.88, allowing him to cross Efficiency Bar w.e.f.

1.7.85 which according to the petitioner is arbitrary and issued by non application of mind as in fact, he was entitled to get the benefit from 1.7.83.

#. Short facts which are required to be taken into consideration for disposal of this petition are as under.

#. The petitioner was appointed as Class I officer in Gujarat Public Health Service w.e.f. 23.7.78. The petitioner is M.S. in General Surgery. He has narrated in the petition several difficulties which he faced on account of non-availability of nusring staff, Laboratory technician, X-ray Technician and Kitchen facilities etc.

#. It appears that the confidential reports of the petitioner for the year 1980-81 were communicated by the 2nd respondent by his letter dated 7.8.81 against which the petitioner made a representation. The representation of the petitioner remained undisposed. The petitioner was informed by the second respondent by his letter dated 20th August, 1982 that no annual confidential reports were required to be written in respect of the petitioner as he was on probation. In the year 1981-82, adverse remarks were incorporated in the confidential reports without consulting the District Development Officer. By a letter dated 9.7.82, representation was forwarded against the remarks vide Annexure : F. The same remained undisposed and the petitioner was informed by respondent no. 2 that the annual confidential report was not required to be taken into consideration. Copy of the letter is produced vide Annexure : G. According to the petitioner, thus, in effect, there was no question of considering the confidential report.

#. The petitioner was due to cross efficiency bar in the pay scale of Rs. 1100-50-1300-EB-60-1600 at the stage of Rs. 1300/-. Surprisingly, the petitioner was informed after a long period of 5 years conveying inter alia that in view of adverse remarks for years 1980-81, 1981-82 and 1982-83, he was not allowed to cross the efficiency bar. Considering the adverse remarks and subsequent confidential report, petitioner was held not entitled to cross the efficiency bar w.e.f. 1.1.83 and he was asked to submit his representation setting out the explanation within a period of 15 days. The petitioner made a grievance that the remarks pertaining to 1982-83 had not been communicated to the petitioner and therefore it was out of question for the respondent to use the same against him. With regard to earlier remarks, the petitioner submitted that the said adverse remarks were not required to be taken into consideration. The

petitioner also submitted a copy of resolution dated 1.7.85, zerox copy of which is produced on the record. Reading the same, it appears that w.e.f. 29.7.81 after completion of probation, the petitioner was confirmed. It seems that there was mistake in writing the date. After a period of one year on 22.9.86, amendment was made in the resolution asking the authorities concerned and the petitioner to read the date as 29.7.82 instead of 27.9.81, zerox copy of the said letter is produced on record. Reading the same, it appears that after a period of probation on 29.7.82, the petitioner was confirmed. The Account Officer on 19.9.86 addressed a letter to the Secretary, drawing his attention that on receipt of the order allowing the petitioner to cross efficiency bar on 1.7.83, increment would be released. The Accounts Officer was waiting for the reply. It seems that thereafter the wheels moved and ultimately on 9.8.88, order came to be passed which is produced at Annexure : J, pointing out that the petitioner was entitled to cross efficiency bar from 1.7.85.

#. Mr. Shah, learned counsel appearing for the petitioner submitted that the respondents drew confidential reports for three years and for the first two years, they were of the view that they were not required to be taken into consideration. The question raised before the Court by the learned A.G.P. is that the petitioner was not confirmed but his period of probation was extended. It is submitted that he was on probation upto 1980 and thereafter the period of probation was extended upto 1982 and the petitioner was confirmed in 1984. If after the extension of the period of probation from 1980 to 1982 services rendered by the petitioner were not satisfactory, there was no question of continuing him in service any more. If the authorities were of the view that despite the fact that the probation period was extended and the petitioner was not rendering satisfactory services, the question of continuing the petitioner in service would not have arisen. The fact that they continued the services of the petitioner and merely because they issued a letter of confirmation in 1984, as the A.G.P. has pointed out is no ground. Secondly, on the record, document is placed to the effect that on completion of the probation period, the petitioner was confirmed on 29.7.82 and therefore there is no question that he was confirmed in 1984. If this is the situation, it is clear that the petitioner is right in making his grievance and is petition is required to be allowed by quashing Annexure : J. The authority shall pass order of permitting the petitioner to cross efficiency bar in accordance with law. The petition

stands allowed accordingly. Rule is made absolute.

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